United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 21-1334**
	)	**Issued: May 18, 2022**
U.S. POSTAL SERVICE, LEHI POST OFFICE, Lehi, UT, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 3, 2021 appellant, through counsel, filed a timely appeal from a July 20, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id*. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant has met her burden of proof to establish a right shoulder condition causally related to the accepted September 12, 2019 employment incident.

FACTUAL HISTORY

On September 18, 2019 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 12, 2019 she sustained a right shoulder injury when she fell exiting her mail truck while in the performance of duty. She stopped work on September 13, 2019.

On September 14, 2019 Dr. Richard J. Donaldson, an osteopath and Board-certified family practitioner, treated appellant for musculoskeletal pain of the right shoulder. He noted that she reported stepping from her vehicle at home and falling onto her right shoulder. Dr. Donaldson's examination findings revealed tenderness of the right shoulder and restricted range of motion. He diagnosed injury of the right shoulder. In a separate report of even date, Dr. Donaldson diagnosed a torn right rotator cuff and opined that appellant was unable to perform any physical activities with her right arm for two weeks.[3]

In a September 30, 2019 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Appellant responded to the development letter and noted that on September 12, 2019 while dismounting her vehicle her right foot hit the pavement and she stumbled and fell down landing on her right side with her right arm extended. She indicated that there were no witnesses to her fall. Appellant noted that her right shoulder was a bit painful, but she continued to work until her shift ended.

In an undated state form report, Dr. Donaldson diagnosed injury of right shoulder and reported appellant stepped from her vehicle at work and fell onto her right shoulder. On September 12, 2019 he completed a form report of injury noting that appellant was a mail carrier and that she fell on her postal route and sustained a right shoulder injury that same day. Dr. Donaldson again diagnosed injury of the right shoulder and advised that appellant would be off work for two to four weeks. In a duty status report (Form CA-17) dated October 28, 2019, he diagnosed unspecified injury of muscle(s) and tendon(s) of the rotator cuff of the right shoulder and indicated that appellant could not return to work.

By decision dated November 5, 2019, OWCP accepted that the September 12, 2019 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that she had not submitted medical evidence containing a diagnosis in connection with the

[3] On September 25, 2019 the employing establishment challenged appellant's claim and submitted a job description for a rural carrier.

accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

OWCP received additional medical evidence. Dr. Donaldson treated appellant in follow up on October 4 and 28 and November 11, 2019 for right shoulder musculoskeletal pain, which began on September 12, 2019 after she fell while exiting her mail truck. Findings on examination of the right shoulder revealed decreased mobility, joint instability, joint tenderness, and weakness. Dr. Donaldson diagnosed injury of the right shoulder initial encounter and chronic right shoulder pain. In letters dated November 11 and 26, 2019, he advised that appellant could not return to work without restrictions due to pain and weakness in her right shoulder. Dr. Donaldson sought to clarify the setting and mechanism of injury due to conflicting information in his prior medical reports. He noted that his medical assistant erroneously recorded that appellant's injury occurred at home when it occurred at work.[4]

On December 18, 2019 Dr. Donaldson submitted a letter summarizing his treatment of appellant on September 14, October 4 and 28, and November 11, 2019. On January 9, 2020 he reevaluated appellant and diagnosed tear of supraspinatus tendon and probable mild malingering. In a January 9, 2020 letter, Dr. Donaldson related that appellant could not return to work for at least 90 days after evaluation by an orthopedic surgeon. In a letter dated January 13, 2020, he diagnosed acute tear of right supraspinatus tendon, which was a direct result of the work-related injury that occurred on September 12, 2019. Dr. Donaldson reported that appellant stepped from her work vehicle and fell onto her right side transmitting excessive force into her right shoulder. He indicated that appellant had no documented right shoulder problems prior to this injury.

A magnetic resonance imaging (MRI) scan of the right shoulder dated December 6, 2019 revealed tendinosis and full-thickness, near complete tear of the right supraspinatus tendon with retraction medial to the glenoid, mild osteoarthrosis of the right acromioclavicular (AC) joint, and subtle degenerative change of the right glenohumeral joint.

On January 15, 2020 Dr. Blake P. Gillette, a Board-certified orthopedist, treated appellant for right shoulder pain that commenced on September 12, 2019 when she fell at work. Findings on examination revealed decreased mobility, positive Hawkins and Neer's test, joint instability, joint tenderness, and weakness. Dr. Gillette noted an x-ray of the right shoulder was normal but an MRI scan revealed full-thickness tear of the rotator cuff. He recommended right shoulder arthroscopy.

On February 25, 2020 appellant requested reconsideration.

On March 19, 2020 Dr. Donald Samms, a Board-certified family practitioner, diagnosed supraspinatus tear and advised that appellant was disabled from work. He noted that her injury would likely be treated with surgery and she would be disabled a minimum of three months.

[4] On October 4, 2019 Courtney Wynkoop, a medical assistant, noted her initial treatment notes reported that appellant's injury occurred at home, which was erroneous.

By decision dated May 5, 2020, OWCP modified its November 5, 2019 decision to find that appellant had established the medical component of fact of injury by providing medical evidence containing a diagnosis in connection with the accepted employment incident of September 12, 2019. However, it found that the medical evidence of record was insufficiently rationalized to establish causal relationship between a diagnosed medical condition and the accepted September 12, 2019 employment incident.

OWCP received additional medical evidence. In an April 29, 2021 report, Dr. Donaldson described her work injuries when she reported falling at work while delivering mail from her postal vehicle injuring her right shoulder. He opined that appellant's work-related injuries caused the rotator cuff tear. Dr. Donaldson explained that given her age and the findings of the MRI scan it was likely that she had significant age associated degenerative changes of her rotator cuff tendons at the time of the injury. His history and examination revealed significant pain and swelling of the shoulder, rotator cuff insertion point tenderness, and weakness of abduction and lifting overhead consistent with a supraspinatus tear. Dr. Donaldson noted that the MRI scan revealed a full-thickness complete or near complete tear of the right supraspinatus tendon and he opined that the initial injury caused a partial tear of the supraspinatus tendon, which eventually extended to a near complete tear that night. He opined that the rotator cuff tear was proximately caused and/or materially aggravated by the employment-related injury and appellant's described fall resulted in the shoulder trauma, which was capable of aggravating and/or accelerating the tear of the supraspinatus tendon. Dr. Donaldson noted that appellant was asymptomatic prior to the injury.

On May 3, 2021 appellant, through counsel, requested reconsideration.

By decision dated July 20, 2021, OWCP denied modification of the May 5, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,[6] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[7] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[8]

[5] *Supra* note 2.

[6] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[8] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[9]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.[10] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted September 12, 2019 employment incident.

On September 14, 2019 Dr. Donaldson diagnosed torn right rotator cuff and opined that appellant was unable to perform any physical activities with her right shoulder. Similarly, in a note and letter dated January 9, 2020, he diagnosed tear of supraspinatus tendon and probable mild malingering. On March 19, 2020 Dr. Samms diagnosed supraspinatus tear and advised that appellant was disabled from work. However, Drs. Donaldson and Samms did not specifically relate the diagnosed conditions to the accepted September 12, 2019 employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of a diagnosed condition or disability is of no probative value on the issue of causal relationship.[12] Therefore, the Board finds that these reports are insufficient to meet appellant's burden of proof.

In an undated state form report, Dr. Donaldson diagnosed injury of the right shoulder when appellant stepped from her vehicle at work and fell onto her right shoulder. Similarly, on September 12, 2019, he noted that appellant sustained a right shoulder injury after she fell on her postal route. Other letters and reports from Dr. Donaldson dated September 14 through October 28, 2019 noted treatment for musculoskeletal pain of the right shoulder, which began on September 12, 2019 after a fall at work. He diagnosed injury of the right shoulder. Likewise, in a January 15, 2020 report, Dr. Gillette treated appellant for right shoulder pain, which began on September 12, 2019 after she fell at work. He diagnosed full-thickness tear of the rotator cuff. While Drs. Donaldson and Gillette provided affirmative opinions, which supported causal relationship, they did not offer a rationalized medical explanation in any of these reports to support

[9] *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[11] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[12] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

their opinion. Medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[13] These reports are, therefore, insufficient to establish appellant's claim.

Appellant submitted a Form CA-17 dated October 28, 2019, from Dr. Donaldson who diagnosed connective tissue disorder and indicated that appellant could not resume work. Dr. Donaldson, however, did not offer an opinion as to whether appellant's diagnosed conditions were causally related to the accepted employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[14] Accordingly, this report is insufficient to establish appellant's claim.

In letters dated November 11 and 26, 2019, Dr. Donaldson advised that appellant could not return to work without restrictions due to pain and weakness in her right shoulder. He confirmed that appellant's injury occurred at work when she was delivering mail, stepped from her vehicle, and fell onto her right shoulder. In these notes, Dr. Donaldson did not offer a medical diagnosis or provide an opinion as to whether a diagnosed condition was causally related to the accepted employment incident. The Board has held that medical evidence that does not include an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[15] Therefore, these letters are insufficient to establish appellant's claim.

In a letter dated January 13, 2020, Dr. Donaldson diagnosed acute tear of the right supraspinatus tendon and opined that this injury was a direct result of appellant stepping and falling from her work vehicle on September 12, 2019, transmitting excessive force into her right shoulder. Similarly, on April 29, 2021, he opined that appellant's work-related injuries caused the rotator cuff tear. Dr. Donaldson opined that the rotator cuff tear was proximately caused and/or materially aggravated by the work-related fall described by appellant. While he indicated that appellant's right shoulder condition was work related, he failed to provide medical rationale explaining the basis of his opinion. Without explaining, physiologically, how the specific employment incident or employment factors caused or aggravated the diagnosed condition, Dr. Donaldson's opinions on causal relationship are of limited probative value and insufficient to establish appellant's claim.[16]

[13] *C.V.*, Docket No. 18-1106 (issued March 20, 2019); *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *A.D.*, 58 ECAB 149 (2006).

[14] *See supra* note 13; *see also L.B.*, Docket No. 19-1907 (issued August 14, 2020).

[15] *See supra* note 13.

[16] *See C.W.*, Docket No. 21-1204 (issued March 11, 2022); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *M.D.*, Docket No. 18-0195 (issued September 13, 2018); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

Appellant submitted a report from a medical assistant. However, certain healthcare providers such as medical assistants are not considered "physician[s]" as defined under FECA.[17] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[18]

Appellant submitted diagnostic testing reports. The Board has held that diagnostic studies, standing alone, are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[19]

As the record lacks rationalized medical evidence establishing causal relationship between appellant's diagnosed right shoulder condition and the accepted September 12, 2019 employment incident, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted September 12, 2019 employment incident.

[17] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *S.O.*, Docket No. 21-1050 (issued January 21, 2022) (medical assistants are not considered physicians as defined by FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

[18] *Id*.

[19] *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board